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## Walking out without notice can be costly

*It is fairly well known that, under art. [2091](#) of the Civil Code of Québec, an employer must give reasonable notice when terminating an employee without a serious reason. Too often, however, we forget that this article imposes a similar obligation upon an employee who resigns without a serious reason.*

A recent decision reminds that “the legal obligation to give notice applies to the resigning employee as it does to the employer who terminates the employee” [*Pharmacie Jean-Sébastien Blais inc. c. Pharmacie Éric Bergeron et André Vincent inc.*, [2016 QCCS 1306](#), par. 54; our translations].

According to the Court, “the notice is meant to give the employer enough time to hire and train someone to replace the employee who resigns, or to adapt his operations to the absence of the employee” [par. 55].

Failure to give reasonable notice can cause the employer damages that the employee could have to compensate. In such a case, the employer has a right to damages calculated “in light of all the facts, the duration of the employment, the employee’s importance in the busi-

ness operations, his salary and work conditions, and the circumstances of his departure” [par. 73].

In this case, the employee was condemned to pay his former employer compensation for \$12,000, representing two months’ salary.

### A few examples

For reasons that are easy to guess, resigning employees are rarely sued and held to pay damages for failure to give reasonable notice. Still, case law does provide some examples of awards payable to ex-employers:

- \$28,193, corresponding to six weeks’ salary (*Traffic Tech inc. c. Kennell*, [2016 QCCS 355](#), a decision that we [already commented](#) on another aspect)



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- \$4,000, set under the Court's discretionary power (*Environnement Sanivac inc. c. Lamoureux*, [2015 QCCQ 10261](#))
- \$1,564, corresponding to two weeks' salary (*Distribution Charlebois inc. c. Leroux*, [2015 QCCQ 7341](#))
- \$5,292, corresponding to three weeks' salary, on top of \$2,500 for general damages and intentional destruction of computer files by the ex-employee (*Ethica Clinical Research Inc. c. Le Gall*, [2015 QCCQ 3708](#))
- \$1,180, for salaries and expenditures paid by the ex-employer (*9142-2097 Québec inc. c. Côté*, [2011 QCCQ 12635](#))
- \$4,000, for lost income (*Transport Daniel Baril A. inc. c. Valade*, [2011 QCCQ 6792](#))
- \$14,814, payable by three ex-employees to compensate income lost by the ex-employer (*Vibration et balancement Borgia (3436993 Canada inc.) c. Richard*, [2011 QCCQ 3989](#))
- \$15,000, set under the Court's discretionary power (*Carrefour immobilier de l'Estrie inc. (Groupe Sutton de l'Estrie) c. Gagnon*, [2007 QCCS 4471](#))
- \$7,500, corresponding to six weeks' salary and including \$1,000 in general damages (*Corporation Tribospec c. Spartan Marketing Services Inc.*, [2006 QCCQ 5840](#)).

## What lessons can we draw from these examples?

**If you are an employee:** announce your resignation early enough to give your employer enough time to plan for your replacement. Keep in mind that the *Civil Code* imposes an obligation of loyalty that persists even after your departure — in addition to eventual non-competition clauses that could still be binding. Ideally, discuss your intention with your employer and come to an agreement on the conditions of your departure.

**If you are an employer:** remind your employees of their obligation to give a notice of resignation, by specifying a clause in the letter of employment or the collective agreement. Periodically, you should also express your willingness to discuss the conditions of resignations.

**In both cases:** keep in mind that, just like a termination, a resignation carries legal consequences that may be costly, and harmful to your reputation.

Do not hesitate to consult with a legal advisor before making a decision: this is clearly one case where an ounce of prevention is worth a pound of cure.

